

IC 20-47-3

Chapter 3. Private Holding Companies

IC 20-47-3-1

Application

Sec. 1. This chapter does not apply to a charter school.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-2

"School building"

Sec. 2. As used in this chapter, "school building" means a building used as part of or in connection with the operation of schools and includes the:

- (1) site for the building;
- (2) equipment for the building; and
- (3) appurtenances to the building, such as heating facilities, water supply, sewage disposal, landscaping, walks, drives, and playgrounds.

However, the term does not include a building that is designed for and to be used exclusively for interschool athletic contests.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-3

Powers; lease of school building; maximum term of lease; petition; required terms of joint lease involving more than one school corporation

Sec. 3. (a) Subject to subsection (b), a school corporation may lease a school building or buildings for the use of:

- (1) the school corporation; or
- (2) a joint or consolidated school district of which the school corporation is a part or to which it contributes;

for a term not to exceed fifty (50) years.

(b) A school corporation may not enter into a lease under this section unless:

- (1) a petition for the lease signed by at least fifty (50) patrons of the school corporation has been filed with the governing body of the school corporation; and
- (2) the governing body, after investigation, determines that a need exists for the school building.

(c) If two (2) or more school corporations propose to jointly enter into a lease under this section, joint meetings of the governing bodies of the school corporations may be held, but action taken at a joint meeting is not binding on any of those school corporations unless approved by a majority of the governing body of each of those school corporations. A lease executed by two (2) or more school corporations as joint lessees must:

- (1) set out the amount of the total lease rental to be paid by each lessee, which may be as agreed upon; and
- (2) provide that:
 - (A) there is no right of occupancy by any lessee unless the

total rental is paid as stipulated in the lease; and
(B) all rights of joint lessees under the lease are in proportion to the amount of lease rental paid by each lessee.
As added by P.L.2-2006, SEC.170.

IC 20-47-3-4

Qualifications of lessor corporation

Sec. 4. A school corporation or corporations may enter into a lease or lease with option to purchase under this chapter only with:

- (1) a corporation organized under Indiana law or admitted to do business in Indiana; or
- (2) a religious organization (or the organization's agent) that is exempt from federal income taxation under Section 501 of the Internal Revenue Code.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-5

Required terms of lease agreement; option to purchase

Sec. 5. (a) Except as provided in subsection (d), a lease must provide that the school corporation or corporations have an option to:

- (1) renew the lease for a further term on like conditions; and
- (2) purchase the property covered by the lease;

with the terms and conditions of the purchase to be specified in the lease, subject to the approval of the department of local government finance.

(b) If the option to purchase the property covered by the lease is exercised, the school corporation or corporations, to procure funds to pay the purchase price, may issue and sell bonds under the provisions of the general statute governing the issue and sale of bonds of the school corporation or corporations. The purchase price may not be more than the purchase price set forth in the lease plus:

- (1) two percent (2%) of the purchase price as prepayment penalty for purchase within the first five (5) years of the lease term; or
- (2) one percent (1%) of the purchase price as prepayment penalty for purchase in the second five (5) years of the lease term;

and thereafter the purchase shall be without prepayment penalty.

(c) However:

- (1) if the school corporation or corporations have not exercised an option to purchase the property covered by the lease at the expiration of the lease; and
- (2) upon the full discharge and performance by the school corporation or corporations of their obligations under the lease;

the property covered by the lease becomes the absolute property of the school corporation or corporations, and the lessor corporation shall execute proper instruments conveying to the school corporation or corporations good and merchantable title to that property.

(d) The following provisions apply to a school corporation that is located in Dubois County and enters into a lease with a religious

organization or the organization's agent as authorized under section 4 of this chapter:

- (1) The lease is not required to include on behalf of the school corporation an option to purchase the property covered by the lease.
- (2) The lease must include an option to renew the lease.
- (3) The property covered by the lease is not required to become the absolute property of the school corporation as provided in subsection (c).

As added by P.L.2-2006, SEC.170.

IC 20-47-3-6

Lessor corporation; submission of preliminary plans

Sec. 6. (a) A lessor corporation proposing to build a school building or buildings must submit preliminary plans, specifications, and estimates for the building or buildings to the lessee or lessees before the execution of the lease. Final plans and specifications must be submitted to the state department of health, state fire marshal, and other agencies designated by law to pass on plans and specifications for school buildings. The final plans and specifications must be approved by those agencies in writing and by the lessee or lessees before the construction of the school building or school buildings.

(b) IC 4-21.5 does not apply to the formulation, issuance, or administrative review of an approval by an agency under subsection (a). However, IC 4-21.5 does apply to the judicial review and civil enforcement of an approval by an agency under subsection (a).

As added by P.L.2-2006, SEC.170.

IC 20-47-3-7

Permissible provisions of lease; payment of taxes; insurance

Sec. 7. A lease entered into under this chapter may provide that as a part of the lease rental for the school building or buildings the lessee or lessees shall:

- (1) pay all taxes and assessments levied against or on account of the leased property;
- (2) maintain insurance on the leased property for the benefit of the lessor corporation; and
- (3) assume all responsibilities for repair and alterations of the leased property during the term of the lease.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-8

Lease preceding acquisition of land

Sec. 8. A school corporation or corporations may, in anticipation of the acquisition of a site and the construction and erection of a school building or buildings, and subject to the approval of the department of local government finance, enter into a lease with a lessor corporation before the actual acquisition of the site and the construction and erection of the building or buildings. However, the lease entered into by the school corporation or school corporations

may not provide for the payment of any lease rental by the lessee or lessees until the building or buildings are ready for occupancy, at which time the stipulated lease rental may begin. The lessor corporation shall furnish a bond to the approval of the lessee or lessees conditioned on the final completion of the building or buildings within a period not to exceed one (1) year from the date of the execution of the lease, unavoidable delays excepted.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-9

Required public hearing; notice of lease terms

Sec. 9. (a) After the lessor corporation and the school corporation or corporations have agreed upon the terms and conditions of a lease proposed to be entered into under this chapter, and before the final execution of the lease, a notice shall be given by publication to all persons interested of a hearing or joint hearing to be held before the governing body or governing bodies of the school corporations authorized to approve the lease. The hearing must be not earlier than:

- (1) ten (10) days after publication of the notice, if new construction is proposed; or
- (2) thirty (30) days after publication of the notice, if improvement or expansion is proposed.

(b) The notice required by subsection (a) must:

- (1) be published one (1) time in:
 - (A) a newspaper of general circulation printed in the English language in the school corporation;
 - (B) a newspaper described in clause (A) in each school corporation if the proposed lease is a joint lease; or
 - (C) if no such paper is published in the school corporation, in any newspaper of general circulation published in the county;
- (2) name the date, time, and place of the hearing; and
- (3) set forth a brief summary of the principal terms of the lease agreed upon, including the:
 - (A) location of the property to be leased;
 - (B) name of the proposed lessor corporation;
 - (C) character of the property to be leased;
 - (D) rental to be paid; and
 - (E) number of years the lease is to be in effect.

The cost of publication of the notice shall be paid by the lessor corporation.

(c) The proposed lease, drawings, plans, specifications, and estimates for the school building or buildings must be available for inspection by the public during the ten (10) day or thirty (30) day period described in subsection (a) and at the hearing under section 10 of this chapter.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-10

Conduct of public hearing; lease authorization procedures

Sec. 10. (a) At the hearing, all interested persons have a right to be heard upon the necessity for the execution of the proposed lease and whether the rental to be paid to the lessor corporation under the proposed lease is a fair and reasonable rental for the proposed building. The hearing may be adjourned to a later date or dates.

(b) Not later than thirty (30) days following the termination of the hearing, the governing body or bodies of the school corporation or corporations may by a majority vote of all members of the governing body or bodies:

(1) authorize the execution of the lease as originally agreed upon; or

(2) make modifications to the proposed lease as agreed upon with the lessor corporation.

However, the lease rentals as set out in the published notice may not be increased.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-11

Notice of signing of lease; appeal

Sec. 11. (a) If the execution of the lease as originally agreed upon or as modified by agreement is authorized by the governing body or bodies of the school corporation or corporations, the governing body shall give notice of the signing of the lease by publication one (1) time in:

(1) a newspaper of general circulation printed in the English language in the school corporation;

(2) a newspaper described in subdivision (1) in each school corporation if the proposed lease is a joint lease; or

(3) if no such newspaper is published in the school corporation, in any newspaper of general circulation published in the county.

(b) Within thirty (30) days after the publication of notice under subsection (a), ten (10) or more taxpayers in the school corporation or corporations who:

(1) will be affected by the proposed lease; and

(2) are of the opinion that:

(A) no necessity exists for the execution of the lease; or

(B) the proposed rental provided for in the lease is not a fair and reasonable rental;

may file a petition in the office of the county auditor of the county in which the school corporation or corporations are located. The petition must set forth the taxpayers' objections to the lease and facts showing that the execution of the lease is unnecessary or unwise, or that the lease rental is not fair and reasonable, as the case may be.

(c) Upon the filing of a petition under subsection (b), the county auditor shall immediately certify a copy of the petition and any other data that is necessary to present the questions involved to the department of local government finance. Upon receipt of the certified petition and data, if any, the department of local government finance shall fix a date, time, and place for the hearing of the matter, which may not be less than five (5) nor more than thirty (30) days after

receipt of the petition and data, if any. The department of local government finance shall:

- (1) conduct the hearing in the school corporation or corporations or in the county where the school corporation or corporations are located; and
- (2) give notice of the hearing to the members of the governing body or bodies of the school corporation or corporations and to the first ten (10) taxpayer petitioners upon the petition by a letter signed by the commissioner or deputy commissioner of the department of local government finance, and enclosed with full prepaid postage addressed to the taxpayer petitioners at their usual place of residence, at least five (5) days before the hearing.

The decision of the department of local government finance on the appeal, upon the necessity for the execution of the lease, and as to whether the rental is fair and reasonable, is final.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-12

Limitation on time to file appeal

Sec. 12. An action to contest the validity of the lease or to enjoin the performance of any of the terms and conditions of the lease may not be instituted at any time later than:

- (1) thirty (30) days after publication of notice of the execution of the lease by the governing body or bodies of the school corporation or corporations; or
- (2) if an appeal has been taken to the department of local government finance, thirty (30) days after the decision of the department of local government finance.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-13

Acquisition of land for building site; sale to lessor corporation

Sec. 13. The lessor corporation shall acquire, own, and hold in fee simple the land on which a school building or buildings are to be erected under this chapter. A school corporation that proposes to lease a school building, either alone or jointly with another school corporation, and owns the land on which it desires to be erected the building or buildings may sell and transfer that land to the lessor corporation in fee simple, subject to the following conditions:

- (1) Before the sale may take place, the governing body of the school corporation must file a petition with the circuit court of the county in which the school corporation is located, requesting the appointment of:
 - (A) one (1) disinterested freeholder of the school corporation as an appraiser; and
 - (B) two (2) disinterested appraisers licensed under IC 25-34.1;

who are residents of Indiana to determine the fair market value of the land. One (1) of the appraisers described in clause (B)

must reside not more than fifty (50) miles from the land.

(2) Upon appointment, the three (3) appraisers shall proceed to fix the fair market value of the land and shall report the amount fixed to the circuit court within two (2) weeks after the appointment.

(3) The school corporation may sell the land to the lessor corporation for an amount not less than the amount fixed by the three (3) appraisers as the fair market value, which shall be paid in cash upon delivery of the deed by the school corporation to the lessor corporation. However, if the land was acquired by the school corporation within three (3) years immediately preceding the date of the filing of the petition with the circuit court, the land may not be sold for an amount less than the amount paid by the school corporation for the land.

As added by P.L.2-2006, SEC.170. Amended by P.L.113-2006, SEC.16.

IC 20-47-3-14

Required levy; payment of obligations

Sec. 14. A school corporation that executes a lease under this chapter shall annually appropriate and pay out of the debt service fund an amount sufficient to pay the lease rental required under the lease. The appropriation and rate are reviewable by other bodies vested by law with the authority to determine that the levy is sufficient to raise the amount required to meet the rental required under the lease.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-15

Exemption of lessor corporation property from taxes

Sec. 15. School buildings leased by a lessor corporation entering into a lease with a school corporation or corporations under this chapter are exempt from all state, county, and other taxes. However, the rental payments to a lessor corporation under the terms of such a lease are subject to all applicable taxes under Indiana law.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-16

Statutory construction; supplemental legislation; limitation of application of other laws

Sec. 16. This chapter shall be construed as being supplemental to all other laws covering the acquisition, use, and maintenance of school buildings by school corporations. However, as to school buildings constructed or leased under this chapter, it is not necessary to comply with the provisions of other laws concerning the acquisition, use, and maintenance of school buildings by school corporations except as specifically required in this chapter.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-17

Lessor corporation; sale of bonds and securities; mortgage bonds

Sec. 17. (a) A corporation qualifying as a lessor corporation under this chapter may issue and sell bonds and other securities. Mortgage bonds issued by a lessor corporation that are a first lien on the leased property are legal and proper investments for state banks and trust companies, insurance companies, and fiduciaries.

(b) Bonds and other securities issued by a lessor corporation under this section need not be sold under IC 5-1-11, and approval of the securities commissioner is not required in connection with the issuance and sale of the bonds.

As added by P.L.2-2006, SEC.170.

IC 20-47-3-18

Termination of lease; disposition of surplus revenues

Sec. 18. (a) Upon the termination of a lease entered into under this chapter, the lessor corporation shall return to the school corporation any money held by the lessor corporation that exceeds the amount needed to retire bonds issued under this chapter and to dissolve the lessor corporation.

(b) A school corporation shall deposit the money received under subsection (a) in its debt service fund or its capital projects fund.

As added by P.L.2-2006, SEC.170.